

MIKE.HUEY@GRAY-ROBINSON.COM
TODD.STEIBLY@GRAY-ROBINSON.COM
JESSICA.LOVE@GRAY-ROBINSON.COM

MEMORANDUM

TO: Carlos Coro, DDS, President
Hank Holderfield, Executive Director
Florida Society of Oral and Maxillofacial Surgeons

FROM: Mike Huey, Todd Steibly, and Jessica Love

DATE: March 17, 2016

SUBJECT: 2016 Legislative Review

The 2016 Legislative Session concluded on schedule on Friday, March 11. For the first time in recent history, both chambers of the Legislature passed the annual state budget with near unanimous support, with the exception of one “nay” vote in the Florida House. The overwhelming approval of the state budget reflected the overall collegiality that came to define the relationship between the House and Senate, making the acrimonious end to last year’s Session, and subsequent Special Sessions, seem a distant memory.

The \$82.3 billion state spending plan represents a 5 percent increase over last year’s budget, providing increases in education spending – including \$700 million in new money for university, college and school construction projects; pay raises for firefighters; additional funding to hire more correctional officers; and funding to continue the restoration of the state’s Everglades, beaches and freshwater springs.

The health care budget lawmakers agreed to totals \$34.3 billion for the next fiscal year. The Agency for Health Care Administration will receive \$26.6 billion of that amount, with \$25.7 billion earmarked for Medicaid services. The legislature provided approximately \$607 million in Low Income Pool (LIP) funding, and appropriated \$227 million for the Disproportionate Share Hospital Program (DSH) for the poor and uninsured. Although the legislature appropriated \$170,000 for staff to administer the Florida Donated Dental Services Program, the Governor announced that he intends to veto the measure once he receives the budget.

Legislators provided tax cuts – although significantly scaled back from the Governor’s request of \$1 billion – that target both businesses and families. The nearly \$400 million in tax reductions include the permanent elimination of sales taxes on the purchase of manufacturing equipment (\$73 million), a three-day back-to-school sales tax holiday (\$30 million), and a

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reduction in the local property tax burden paid by property owners to fund education (\$290 million).

The Legislature is seeking to provide additional tax reductions through three legislatively created proposed constitutional amendments that will appear on the election ballots this fall. One of the proposed amendments would grant a property tax break to any first responders who are disabled in the line of duty. Another would exempt solar panels from tangible personal property taxes. The third proposed constitutional amendment would lock in the value of a home belonging to a senior citizen who is eligible for a property tax break. The proposed solar panel tax break will appear on the August primary ballot, while the two property tax amendments will appear on the November ballot. Each of the three proposed constitutional amendments must be approved by at least 60 percent of voters in order to pass.

LEGISLATION THAT PASSED

Of the 1,814 bills filed, only 279 were sent to the Governor for his signature. We have compiled a list of legislation of interest to FSOMS which passed this Session.

Balance Billing

One of the most heavily lobbied health care bills of the Session dealt with balance billing. Representative Trujillo and Senator Garcia filed House bill 221 and Senate bill 1442, respectively, which prohibit providers from balance billing patients with PPO and EPO health insurance plans in emergency rooms and scheduled inpatient procedures at an approved in-network hospital. Hospitals, ambulatory surgical centers, and urgent care centers are also prohibited from balance billing. The bill establishes standards for determining reimbursement based upon the current balance billing prohibition in the HMO statute, which is the lesser of the provider's charges, the usual and customary provider charges for similar services in the community where the services are provided, or the charge mutually agreed to by the insurer and the provider within 60 days of claim submission. House bill 221 authorizes providers and insurers to settle disputed claims under the statewide provider and health plan claim dispute resolution program. The legislation also requires insurers to publish a list of their network providers on their websites, and to update the list monthly. Hospitals must also publish information on their websites regarding their contracts with plans and providers of hospital-based services. If approved by the Governor, the bill will take effect July 1, 2016.

Transparency in Health Care

Another high-profile issue of the 2016 Legislative Session, House bill 1175 by Representative Sprowls (SB 1496 by Senator Bradley) seeks to provide consumers with more information about health-care prices and quality. The bills were filed at the request of the Governor, who has been a vocal critic of the hospital industry for not providing enough

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transparency about prices and accusing them of “price gouging.” The bill creates pre-treatment transparency obligations on hospitals and ambulatory surgery centers licensed under Chapter 395, Florida Statutes, and health care practitioners licensed under Chapter 456, Florida Statutes, who provide non-emergency services. Facilities must post online the average payments and payment ranges received for bundles of health care services defined by the Agency for Health Care Administration (AHCA) and the information must be consumer friendly. Facilities must also provide to prospective patients information on the facility’s financial assistance policy, as well as the names, addresses, and telephone numbers of the health care practitioners with which it contracts. Patients may request a post-treatment itemized bill from a facility or practitioner, which must be provided within seven days. The personalized estimate must also inform the patient of the practitioner’s financial assistance policy, charity care policy, and collection procedures, but provides that the estimate does not preclude the actual charges from exceeding the estimate. Failure to timely provide the estimate shall result in a daily fine of \$1,000, not to exceed \$10,000 for facilities, and a daily fine of \$500, not to exceed \$5,000, for practitioners. AHCA is required to contract with a vendor to provide the internet-based platform through a competitive procurement process.

Dental Care Access Accounts

House bill 139 by Representative Cummings (SB 234 by Senator Gaetz) provides funds to help smaller communities recruit and keep dentists. The bill requires the Department of Health (DOH) to develop and implement a dental care access account initiative to benefit dentists who are employed by a public health program or who commit to opening a private practice in a medically underserved area. The state will provide \$3 for every \$1 in local matching funds, with the requirement that each award may not be less than \$10,000 or exceed \$100,000. The number of new dental care access accounts that may be established is limited to 10 per fiscal year. Dentists may use these funds to help set up their practice by investing in property or facilities, repay student loans, or invest in equipment required to establish and operate a dental office.

Medicaid Reimbursement to Health Access Settings

Senator Grimsley filed legislation (SB 580, HB 595 by Representative Plasencia) authorizing AHCA to reimburse a health access setting (community service programs) under the Medicaid program for remedial dental services delivered by a dental hygienist when provided to Medicaid recipients under 21 years of age. It was explained that hygienists currently perform these remedial tasks, such as administering fluoride and sealants, without supervision in health access settings. The bill clarifies that health access settings may receive reimbursement from AHCA for the remedial tasks performed by hygienists.

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Prescribing of Controlled Substances

Florida is the only state that does not allow advanced registered nurse practitioners (ARNPs) to prescribe controlled substances and is one of two states that does not allow physician assistants (PAs) to prescribe these medications. Representative Pigman passed House bill 423 (SB 676 by Senator Grimsley) to allow ARNPs and PAs to prescribe, dispense, order, and administer controlled substances to the extent authorized under their supervising physician's protocol. The bill also subjects ARNPs and PAs to administrative disciplinary actions, such as fines or license suspensions, for violating standards of practice in law relating to prescribing and dispensing controlled substances. The bill prohibits ARNPs and PAs from prescribing controlled substances in pain management clinics. After years of opposing this legislation, the Florida Medical Association registered its support after amending the bill to restrict prescribing authority only under a supervising physician's protocol.

Sunset Review of Medicaid Dental Services / Dental Carve-out

Despite heavy opposition from the health plans, Representative Diaz successfully passed legislation to remove dental services from the list of minimum benefits that a Managed Medical Assistance (MMA) program provides, effective March 1, 2019. House bill 819 (SB 994 by Senator Negron) requires AHCA to prepare a comprehensive report on dental services provided under the Statewide Medicaid Managed Care program that examines the effectiveness of the managed care plans in providing dental care. The report must also compare Florida's experience with those of other states in delivering the same services. If the Legislature fails to act on the report, AHCA is required to move forward with implementing a statewide competitive procurement for a separate dental program for children and adults with a choice of at least two vendors.

2018 Legislative Session

The state Constitution requires that the Legislature convene the annual Legislative Session on the first Tuesday after the first Monday in March in each odd-numbered year, leaving it up to the Legislature set the date in even-numbered years. The Legislature passed Senate bill 7076, which will require that the 2018 Regular Session convene on January 9, 2018, if approved by the Governor.

LEGISLATION THAT FAILED

Continuing Education Requirements for Health Care Practitioners

Legislation was filed by Representative Roberson (HB 1113) and Senator Hutson (SB 1660) which would have changed the current statute to require three hours, instead of two, of continuing education courses regarding domestic violence and would have added a requirement

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that the course include instruction on identifying and reporting child abuse. The language also provided that these courses would be required for each biennial relicensure, instead of once every six years. Neither bill received a committee hearing.

Direct Primary Care

Senate bill 132 by Senator Grimsley and House bill 37 by Representative Costello would have clarified that “direct primary care agreements” are not insurance products. Direct primary-care agreements are contracts between patients and doctors that remove the role of insurers in making payments. The bills would have made clear that the agreements are not regulated by state insurance laws and do not qualify as minimum essential coverage to satisfy the individual shared responsibility provision of the Affordable Care Act. Under the agreements, patients would pay monthly fees for services such as annual physicals, routine laboratory tests and vaccinations. The agreements could be coupled with insurance policies that cover high-cost treatments and illnesses and lengthy hospitalizations. We anticipate this legislation will be filed again next Session.

Certificate of Need

The certificate of need (CON) program, administered by AHCA, requires certain health care facilities to obtain authorization from the state before offering certain new or expanded services. Health care facilities subject to CON review include hospitals, nursing homes, hospices, and intermediate care facilities for the developmentally disabled. The House proposal (HB 437 by Representative Sprowls) would have completely eliminated CON review requirements for hospitals, but retain the regulation for nursing homes, hospices and intermediate care facilities. The Senate approach (SB 1144 and SB 212 by Senator Gaetz) created an exemption for all facilities on the condition that the licensee provide charity care to uninsured low-income residents in its service area in an amount equal to or greater than the average for similar facilities in the same district. We expect these bills to be filed again next Session.

Ambulatory Surgical Centers

The House put forward legislation (HB 85 by Representative Fitzenhagen) to allow patients to stay in an Ambulatory Surgical Center (ASC) for up to 24 hours, and create a new license for recovery care centers (RCC) which could admit, for up to 72 hours, patients for whom an acute care hospitalization is not required and an uncomplicated recovery is expected. The Senate legislation (SB 212 by Senator Gaetz) would have only allowed ASCs to keep patients for up to 24 hours, but did not provide for RCC licensure. The Senate bill also required that ASCs provide services to Medicaid, Medicare, and charity care patients as a condition of licensure. As Session drew to an end, the Senate amended the substance of several other health care bills to this bill, some of which were controversial, causing the bill to die. We anticipate that ASCs and RCCs will be addressed again during the 2017 Session.

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We sincerely appreciate the opportunity of representing FSOMS and commend you for your tireless commitment to assuring the association is an integral part of the legislative process each and every Session. Should you have any questions concerning the information provided in this report, please do not hesitate to contact us.